

INSTRUCTIONS ON USE OF MIRANDA RIGHTS STATEMENT

1. From time to time information comes to the attention of Agency officials indicating that a CIA employee has violated the law. Allegations may be made, for example, that employees have been involved in thefts, drug sales, conflicts of interest, or falsification of vouchers. Such charges must be investigated from at least two points of view. First, there is the obligation laid upon the Agency by Section 535(b), Title 28, United States Code to report to the Attorney General any information, allegation, or complaint relating to a violation of Title 18, the Criminal Code, involving Government officers and employees. Although it is not the responsibility of the Agency to obtain total corroboration of such charges or allegations, it is incumbent upon us to seek some substantiation so that an individual's record and reputation are not besmirched by completely unfounded and malicious accusations. Second, the authority of a department or agency head to investigate any charge or suspicion of wrongdoing on the part of any employee is inherent in his authority and responsibility to operate his agency and to perform his mission. It is by means of such investigation that an agency head determines upon appropriate disciplinary action if warranted. In the case of CIA there would be many instances in which an individual suspected of a violation of the Criminal Code would be handling very sensitive operations and would have access to highly classified information. We would be remiss in our duties, particularly in light of the Director's statutory responsibility for protecting intelligence sources and methods from unauthorized disclosure, if we did not investigate the charges and determine rather quickly whether or not to remove that individual from such work and access.

2. Such investigations will in many instances require that employees be interviewed. When such interviews go beyond a general inquiry into the facts and background of the alleged crime and begin to focus on the interviewee as a suspect, it is necessary that the interview be stopped and the interviewee be given the four warnings contained in the attached statement:

- a. That the suspect has a constitutional right to remain silent;
- b. That anything he does say can and will be used against him in court;
- c. That he has a right to confer with counsel prior to answering any questions and to have counsel present during the questioning itself; and,
- d. That if he is indigent he has a right to have appointed counsel present.

These four warnings were set forth by the U.S. Supreme Court in the case of Miranda v. Arizona 384 U.S. 436 (1966). The Court, concerned with protecting the individual's Fifth Amendment privilege against self-incrimination and the Sixth Amendment right to counsel, held that when a person has been taken into custody or otherwise deprived of his freedom of action in any significant way he must be read these warnings before law enforcement officers may begin to question him. In the absence of such warnings it cannot be presumed that the individual making an admission or confession had voluntarily, knowingly, and intelligently, waived his constitutional rights. Therefore, such statements obtained by the police during in-custody interrogation would be generally inadmissible at trial.

3. It is, of course, true that Office of Inspector General or Office of Security personnel are not law enforcement officers and questioning by these Agency officials cannot be termed a custodial interrogation. Nevertheless, in order to provide adequate protection of the constitutional rights of CIA employees and also to avoid jeopardizing any possible prosecution, the Agency will provide such warnings in accordance with the guidance presented below.

- a. When there is no information that a crime has been committed by the individual being questioned, it is not necessary to read the Miranda Rights Statement.

- b. Before beginning to question an employee against whom there are allegations, charges, or other evidence of violation of criminal laws, the Miranda Rights Statement will be read to that employee.

- c. If at any time during the course of an interview, information is developed indicating that the person being questioned may have

violated the criminal laws, the interview will be stopped and the Miranda Rights Statement will be read to the employee before questioning is resumed.

d. If after being read the Miranda Rights Statement, the employee refuses to sign the statement but, nevertheless, agrees to be interviewed, the interviewer will call a third party into the room and will read the Miranda Rights Statement to the interviewee a second time in the presence of the witness. Both the interviewer and the witness will then sign a statement to the effect that the Miranda warnings were read before the questioning began and the interviewee agreed to such questioning.

e. If after being read the Miranda Rights Statement the employee declines to answer questions, the interview will be terminated.

f. If the employee requests that an attorney be present, the interview will be terminated so that the employee may obtain the services of an attorney. If security considerations warrant, the employee will be advised to obtain a cleared attorney. Alternatively, the employee's attorney may be cleared.

g. It is not expected that any employee will be able to meet the test of financial inability to qualify for appointment of counsel under the Criminal Justice Act, 18 U.S.C. 3006A. That Act provides that at every stage of the proceedings the court shall appoint counsel for a defendant if it is satisfied after appropriate inquiry that the defendant is financially unable to obtain counsel. The test, therefore, in the context of an interview of an employee by the Agency, is not whether the employee would be able to afford an attorney in a lengthy court trial and appeal, but whether the employee could afford to hire an attorney to be present during the interview. Few employees could seriously claim such financial inability. Still, should the employee insist that he cannot afford an attorney, the interview would have to be terminated. Since the Agency does not have the authority to appoint counsel the case would have to be referred to the Department of Justice by the Office of General Counsel.

4. Although the guidance presented above is expected to cover most circumstances, the interviewer is encouraged to contact the Office of General Counsel before questioning employees suspected of violating criminal laws in order to obtain advice specifically tailored to the case at hand. In addition, the Office of General Counsel should be contacted if there is a question whether a particular action or situation constitutes a violation of Federal criminal laws, if the employee requests that an attorney be present, or if the employee asks that an attorney be appointed.